

JUL 28 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

SALVADOR AVILA-OCAMPO,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-70554

Agency No. A95-402-228

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006 ^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Salvador Avila-Ocampo, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

cancellation of removal. To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252. We review de novo claims of due process violations in immigration proceedings. *See Sanchez-Cruz v. INS*, 255 F.3d 775, 779 (9th Cir. 2001). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the agency's discretionary determination that Avila-Ocampo failed to show exceptional and extremely unusual hardship. *See See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 929-30 (9th Cir. 2005). Avila-Ocampo's contention that the agency deprived him of due process by finding that he failed to establish exceptional and extremely unusual hardship does not state a colorable due process claim. *See id.* at 930 (9th Cir. 2005) (“[t]raditional abuse of discretion challenges recast as alleged due process violations do not constitute colorable constitutional claims that would invoke our jurisdiction.”).

Avila-Ocampo's contentions that the case should be remanded under *Lanza v. Ashcroft*, 389 F.3d 917, 924 (9th Cir. 2004) and that the BIA violated his due process rights by affirming without opinion are unavailing. Contrary to Avila-Ocampo's contentions, the BIA did not affirm the IJ's decision without opinion, but rather specifically dismissed his appeal on the ground that he failed to establish the requisite hardship. *Cf. Lanza*, 389 F.3d at 924 (remanding where it

was unclear whether the BIA affirmed on a reviewable or unreviewable ground).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.